

The National Advisory Board on  
Social Welfare and Health Care Ethics ETENE

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## **POSITION ON THE STATUS AND TREATMENT OF UNDOCUMENTED IMMIGRANTS**

The situation of individuals residing in Finland without a residence permit, i.e. undocumented immigrants, has generated many questions and a great deal of concern among both the undocumented immigrants themselves and healthcare professionals.

Undocumented immigrants come from very different backgrounds. They are a highly heterogeneous group consisting of people hailing from both EU member states and other countries. In practice, undocumented immigrants in Finland include people from at least the following groups: 1) the Roma from eastern Europe, who are EU citizens and whose residence in Finland is lawful but who, due to the lack of public health insurance in their own country, are not provided with a healthcare card that would entitle them to health care in Finland, 2) students residing in Finland who have no insurance cover in case of an illness and 3) persons residing in the country without appropriate documentation (e.g. persons from countries outside of the EU, the EEA or Switzerland; persons remaining in the country without visa, or individuals whose application for a residence permit has been refused). The position of the last group is the most problematic as concerns health services. According to an estimate by the police, there are approximately 2,000 to 3,000 undocumented immigrants in Finland. The estimate does not include the Roma from Romania and Bulgaria.

In Finland, in order for a person to receive health care they must be identified and reside in the country. In the case of undocumented immigrants, these starting points are problematic and lead to discrimination in health services. From the perspective of public health, it is a cause for concern that diseases such as tuberculosis and HIV are left untreated with undocumented immigrants, unless they require urgent treatment. Several other chronic illnesses are also left untreated.

According to the ethics of health care, physicians and other health care personnel must treat their patients as equal, and the ethnic background, religion, political opinions and social status of the person may not impact the activities. Society may not deny patients sufficient care, nor may it intervene in the obligation of health care professionals to treat patients based on clinical need alone.

The Advisory Board has addressed the matter of undocumented immigrants in its meeting on 22 May 2013 and on 25 September 2013 has heard as an expert physician Pekka Tuomola, Head of Mental Health and Substance Abuse Work at the Helsinki Deaconess Institute. Tuomola works as a physician at the Global Clinic that receives and provides treatment to undocumented immigrants. The clinic, supported by the Helsinki Deaconess Institute, was established in Helsinki in 2011. The activities are based on the contribution of volunteering physicians and other health care professionals. Approximately 60 to 70 per cent of the patients at the clinic are Roma, many of them expectant mothers. Among undocumented immigrants, those in the weakest position are women and children, expectant mothers, the elderly and people with disabilities and long-term illnesses.

The roots of health care services provided at the Global Clinic are in medical ethics, Christian ethics and in the principle of equality of all people. The activities are primarily aimed at providing humanitarian help to individuals in a vulnerable position and at reducing human suffering. Access to treatment is made more difficult by the fact that undocumented immigrants are often unaware of their rights and have no knowledge of



where they can receive treatment. Often, they have been faced with many kinds of suffering and have become the targets of unnecessary accusations arising from intolerance in society. According to Tuomola, undocumented immigrants are afraid of getting caught and often find it difficult to talk about their situation without the help of an interpreter. The building of trust, necessary for the provision of help, can thus be challenging for a number of reasons.

Finland has ratified and is bound by the Convention for the Protection of Human Rights and Fundamental Freedoms. The right to health is a fundamental human right based on which all human beings are entitled to the best achievable physical and psychological health. In addition to access to health care and medicines, this broad concept also incorporates other rights. The International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the United Nations is possibly the most important convention as concerns the right to health. The UN Committee on Economic, Social and Cultural Rights has defined core obligations for governments pertaining to the matter. For example, governments must arrange that everyone is provided with the necessary medicines as defined by the World Health Organisation (WHO) and must secure everyone access to health services. These must be guaranteed to all without discrimination while paying particular attention to groups in the weakest position. As a fundamental human right, the right to health and health services thus belongs to everyone residing in the area of a particular state.

According to the UN Convention on the Rights of a Child (60/1991), the States Parties shall ensure to the maximum extent possible the survival and development of the child. The parties also agree on every child's right to health. The States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. They shall strive to ensure that no child is deprived of his or her right of access to such health care services. States Parties have also undertaken to take appropriate measures to ensure appropriate pre-natal and post-natal health care for mothers.

Under the Constitution of Finland, those who cannot obtain the means for a life of dignity have the right to receive indispensable subsistence and care. The public authorities shall guarantee for everyone, as provided in more detail by an Act, adequate social, health and medical services and promote the health of the population. Moreover, the public authorities shall support families and others responsible for providing for children so that they have the ability to ensure the wellbeing and personal development of the children.

When discussing medical care provided to undocumented immigrants, it is important to make the distinction between the right to receive public (municipal) health care services and the right of a municipality to receive remuneration for services rendered. According to Health Care Act (1326/2010), urgent medical care must be provided irrespective of documentation or lack thereof. According to section 50(1) of the said act:

*"Urgent medical care, including urgent oral health care, mental health care, substance abuse care, and psychosocial support shall be provided for patients regardless of their place of residence. Urgent cases include cases involving an injury, a sudden onset of an illness, an exacerbation of a long-term illness, or a deterioration of functional ability where immediate intervention is required and where treatment cannot be postponed without risking the worsening of the condition or further injury."*

According to legislation, the right to urgent medical care thus also applies to undocumented immigrants. Currently, the legislation does not contain an obligation to provide non-urgent care, but the provision of more extensive care is not illegal. Under the Act, after the provision of urgent medical care the patient is transferred to his or her home municipality for the purpose of receiving further care. Undocumented immigrants, however, do not have a home municipality in Finland. In Finland, social security is defined by the Municipality of Residence Act, according to which social security is determined based on residence. The Act also determines if a person is to be provided with health care services by the public health system. The Health Insurance Act determines entitlement to health insurance benefits. A person may, however, be entitled to public health care services and health insurance medical care compensation, if EU legislation or an



international social security agreement so requires. Nationals of non-EU countries and countries uncovered by the different social security agreements can be charged full price for the care provided.

The Government has submitted a proposal to the Parliament (HE 103/2013) on a new act on cross-border health care. The new legislation also includes existing regulations on procedures and reimbursement for treatment costs. The objective of the act is to clarify the rights of patients in a situation where they seek treatment in another EU member state. It is proposed that instead of the municipality providing the treatment, the state should meet the costs of the treatment more extensively in cases in which treatment is given to a person whose treatment costs Finland is responsible for, but who does not have a home municipality in Finland. In addition, it is proposed that the state compensation should be extended to situations in which a person without a home municipality is given urgent treatment in accordance with the Health Care Act, but the cost of treatment could not be collected.

The fees payable by users of municipal social welfare and health care services are determined by the Act on Client Fees in Social Welfare and Health Care (734/1992) and the related decree (912/1992)

The proposals contained in HE 103/2013 do not remedy the status of individuals who are not entitled to non-urgent care under an international convention or an EU regulation. They will continue to have the right to urgent treatment irrespective of whether or not they can afford to pay for treatment. The municipality that has provided the treatment will either charge the costs from the patient or receive them from the government. Further, when enacted, the act will not generate the right to health insurance for undocumented immigrants.

ETENE finds that

- Insufficient treatment of undocumented immigrants is not an acceptable alternative from the perspective of the ethics of medical care. The right of undocumented immigrants to health services under current legislation is in urgent need of specification also for the reason that the operating methods of different municipalities differ from one another.
- The necessary decisions must be made once the report by the National Institute for Health and Welfare on the topic is completed. It is necessary to determine how we can best ensure that in addition to urgent care undocumented immigrants are provided with other necessary treatment at a sufficiently early stage. Groups in need of such care include HIV-positive expectant mothers whose child is at risk of contagion and patients with poorly balanced diabetes.
- The Finnish health care system must function in such a way as to enable access to treatment and the provision of treatment for undocumented immigrants and, where necessary, referrals to further treatment as appropriate.

It is in the spirit of international conventions ratified by Finland that undocumented immigrants receive the health care services and humane treatment that they are entitled to also from the perspective of human rights. ETENE thus finds it important that the human dignity of undocumented immigrants is recognised and that their health services are clarified also with new legislation, where necessary.

On behalf of the Advisory Board

Chairman

Markku Lehto

General Secretary

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